

**1:15-cv-00577**  
**Daniels v. Village of Depew et al**

UNITED STATES OF AMERICA  
UNITED STATES DISTRICT COURT: WESTERN DISTRICT OF NEW YORK

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SHAWN DANIELS

Index No. 1: 15-CV-00577

Plaintiff,

-VS-

**COMPLAINT**

VILLAGE OF DEPEW, VILLAGE OF DEPEW POLICE DEPARTMENT, STAN CARWILE, CHIEF OF THE VILLAGE OF DEPEW POLICE DEPARTMENT, In His Official and Individual Capacity, and POLICE OFFICER BRIAN J. GUMMO, In His Official and Individual Capacity.

Defendants.

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**JURY DEMAND**

Trial by Jury on all issues is demanded

**PRELIMINARY INTRODUCTION**

1. This is an action brought pursuant to 42 U.S.C § 1983 as applicable to the Fourth and Fourteenth Amendments of the United States Constitution for the unlawful seizure and excessive force used by the defendants surrounding the unjustifiable and unnecessary killing of Plaintiff's three year old canine; aka a female German Shepherd dog named "LADY," on or about July 5<sup>th</sup>, 2013.

## **PARTIES**

2. Plaintiff, Shawn Daniels, now resides at 31 Annamarie Terrace, Cheektowaga, New York, 14225, which is located in Erie County, State of New York. At the time of the transactions and occurrences that give rise to this lawsuit, Mr. Daniels was residing at 15 Muskingum Street, Apt. 1 in the Village of Depew, 14043, which is also located within the County of Erie, State of New York.
3. Upon information and belief, the VILLAGE OF DEPEW, is a municipal corporation duly organized and existing under and pursuant to the laws of the State of New York and has been incorporated as such since 1894.
4. Upon information and belief, the Village of Depew Police Department is under the direct control of the Village of Depew in the State of New York.
5. Upon information and belief, Defendant Stan Carwile is the Police Chief of the Village of Depew Police Department.
6. Upon information and belief, the defendant Brian Gummo, is employed by the Village of Depew Police Department and was acting in such capacity during the events that give rise to this lawsuit.

## JURISDICTION

7. Plaintiff brings this action to recover damages for the violation of his civil rights under the Fourth Amendment to the United States Constitution, codified at 42 U.S.C. § 1983 and as bestowed upon the states and its citizens through the Due Process Clause by the Fourteenth Amendment of the United States Constitution.
8. The unreasonable killing of a companion animal constitutes an unreasonable "seizure," of personal property under the Fourth Amendment. **Carroll v. County of Monroe**, 712 F.3d 649 (2013).
9. Jurisdiction is invoked pursuant to 28 U.S.C. §§ 1331 and 1332 (federal question) and § 1343 (civil rights).
10. Declaratory, injunctive, and equitable relief is sought pursuant to 28 U.S.C. §§ 2201 and 2202.
11. Compensatory and Punitive damages are sought pursuant to 42 U.S.C. § 1983.
12. Costs and Attorney's fees may be awarded pursuant to 42 U.S.C. § 1988 and Fed. R. Civ. P. Rule 54.
13. Supplemental Jurisdiction for the related state claims is invoked pursuant to 28 U.S. Code § 1367(a), as the attached claims form part of the same case and controversy under Article III of the United States Constitution.

14. As mandated by the Supremacy Clause, in relations to actions brought pursuant to 42 U.S.C. § 1983, plaintiff does not have to comply with Municipal Law Section 50-e with regard to filing a Notice of Claim with regard to Federal Causes of Action.
15. However, as related to the supplemental New York State Causes of action, on or about the 27<sup>TH</sup> day of September, 2013, a Notice of Claim was served on behalf of the plaintiff upon the Village of Depew, the Village of Depew Police Department, and police officer John Doe, in triplicate, which Notice of Claim sets forth the name and post office address of Shawn Daniel, the plaintiff, the name and post office address of his attorneys, the nature of the claim, the time when, the place where, and the manner in which the claim arose, together with the items of damages and injuries then known to exist, and the said Notice of Claim was served upon the Village of Depew, the Village of Depew Police Department, and police officer John Doe, within ninety (90) days of the date upon which the claim arose.
16. At least thirty (30) days have elapsed since the service of the notice of claim, as aforesaid, and the above-referenced defendants have failed and neglected to adjust or pay the said claim.



### **VENUE**

17. This action properly lies in the Western District of New York, pursuant to 28 U.S.C. § 1343(3) because the claims arose in this judicial district and the defendants reside in and /or do business in Erie County.

### **FACTUAL BACKGROUND**

18. On or about July 5<sup>th</sup>, 2013, at or about 8:00 pm, Plaintiff Shawn Daniels was moving items out of his residence at 15 West Muskingum Street, Apt. 1 along with his two sons, David Daniels and Michael Daniels.
19. Michael Daniel and David Daniels got into a verbal argument with minor pushing and shoving involved; taking place in the back yard at the above-referenced location, at which time Michael Daniels left the premises.
20. Shortly thereafter, Defendant Gummo walked through the backyard of Muskingum and entered into the doorway of Apt. 1, where the Plaintiff was with his German Shepherd dog Lady and his son, David Daniels.
21. The intrusion and trespass upon the Daniel's property prompted Lady to bark and possibly nip Officer Gummo on the hand.
22. At this point, defendant Gummo retreated into the back yard, as Lady pursued.

23. Plaintiff and his son David Daniels also rushed into the back yard, at which time Plaintiff sharply commanded Lady to stop chasing the Officer by calling her name. Plaintiff also walked towards Lady and was prepared to grab her collar to alleviate the situation.
24. Lady began to retreat, moving away from Defendant Gummo. At this point, Defendant Gummo had time to obtain his firearm and he fired a shot from his firearm, hitting Lady in the back of the head and killing the companion animal of the Plaintiff.
25. Plaintiff voiced his dissent at Defendant Gummo for the brutal killing of his best friend, at which time Defendant Gummo pointed the firearm at the Plaintiff and threatened him with said firearm. Defendant Gummo pointed his firearm at Plaintiff at least twice throughout this series of events.
26. Defendant Gummo continued to verbally abuse Plaintiff and his son David Daniels, and ordered other Village of Depew officers to put David Daniels in handcuffs.
27. Defendant Gummo's discharge of his firearm in close proximity to Plaintiff and his son David Daniels was reckless, unjustifiable, and unnecessary, as any threat the canine posed had passed as the canine was in retreat and the Plaintiff had gained control of the situation.
28. Defendant Gummo immediately escalated to deadly physical force against the dog as opposed to using a less lethal method despite the fact any injury he had was minor and superficial in nature.

29. The killing of Lady, while an intentional act, was in very close proximity to numerous individuals including the plaintiff and David Daniels, constituting a reckless disregard for the lives, safety and well being of Plaintiff and his son.
30. Defendants, while still acting under the color of state law, then destroyed the potential of recovering any forensic evidence by having Lady's body disposed of without the consent of the Plaintiff and without providing Plaintiff the opportunity to consult with an attorney regarding the demise of his beloved animal.
31. Defendants, while acting under the color of state law, violated Plaintiff's Fourth Amendment and Fourteenth Amendment right to be free against unreasonable searches and seizures in that defendants unreasonably and unjustifiably interfered with and deprived Plaintiff of his possessory and property interests in his dog "Lady," when Lady was shot needlessly in the presence of Plaintiff and his son, neither of whom gave permission to kill said companion animal and both of whom were devastated by the unnecessary slaying of said companion animal.
32. Lady was on her own property of which she briefly defended against the Defendant's unlawful intrusion, and presented no imminent threat, and certainly no imminent threat that could remotely justify lethal force after no other lesser means of force were attempted. Thereby, the force used during the seizure was excessive and in violation of the Plaintiff's right to be protected against unlawful searches and seizures.

33. Defendant Gummo acted unreasonably as judged objectively by the prospective of a reasonable police officer, and not the subjective intent of Officer Gummo.
34. Plaintiff's interest in being free from such unreasonable searches and seizures and being free from unreasonable interference with the companionship he had with his dog Lady outweigh any interest defendants may have to justify their interference with Plaintiff's property rights in the ownership of said dog.
35. Plaintiff's son, David Daniels was coerced to write a statement pertaining to the argument he had with his brother, and the Police department imposed a gag order on the police reports directing that the reports receive "no press."
36. In conjunction with the unauthorized disposal of Lady's body, these actions demonstrate both consciousness of guilt on the part of the defendants, and an effort to cover up their civil rights violations against the Plaintiff.

**First Cause of Action for violations of the Fourth and Fourteenth  
Amendment as per 42 U.S.C. § 1983 against Village of Depew Police Officer  
Brian Gummo, in his Official and Individual Capacity:**

37. Plaintiff, SHAWN DANIELS repeats and reiterates each and every foregoing allegation of this complaint with full force and effect as if set forth at length in this cause of action.

38. On July 5, 2013, at or about 8:30 pm, the defendants came to Plaintiff's former residence and entered the residence without permission of the Plaintiff.
39. The intrusion and trespass upon the Daniel's property prompted Lady to bark and possibly nip Officer Gummo on the hand in the threshold area of Plaintiff's Apt. at 15 W. Muskingum Street, in the Village of Depew, 14043, State of New York.
40. Lady pursued Defendant Gummo into the back yard, with the Plaintiff in hot pursuit. The Plaintiff called out for Lady as he went to restrain her.
41. Lady heeded her owner's instructions and began to move away from Defendant Gummo. This allowed the Defendant time to produce his firearm and he dispatched a bullet into the back of Lady's head, killing said canine for no justifiable reason.
42. Defendant Officer Brian Gummo, acting under color of state law, violated Plaintiff's Fourth Amendment rights against unreasonable searches and seizures in that defendants unreasonably interfered and terminated Plaintiff's possessory interest in his dog Lady as she was shot by Officer Gummo on Plaintiff's property while Plaintiff was onlooking, in the zone of danger, and desirous of retaining Lady for her remaining natural life span.
43. The killing of Lady was unjustifiable, excessive in force rendered, and constitutes an official policy of defendants to shoot and kill dogs without justification under the factual circumstances described herein.



44. Said defendant then continued the prolonged seizure by pointing his weapon at the Plaintiff on at least two occasions when Plaintiff voiced his dissent over such a brutal deprivation of his property and his best friend.
45. Said actions fully disregarded the Constitutional rights of the Plaintiff to be free of unlawful and unreasonable seizures under the Fourth and Fourteenth Amendments of the Constitution.

**Second Cause of Action for Plaintiff Shawn Daniels for violations of the Fourth and Fourteenth Amendment as per 42 U.S.C § 1983 against the Village of Depew Police Department and the Village of Depew, Stan Carwile, Chief of the Village of Depew Police Department, in His Official and Individual Capacity, and Village of Depew Police Officer Brian J. Gummo, In His Official and Individual Capacity.**

46. Plaintiff, SHAWN DANIELS repeats and reiterates each and every foregoing allegation of this complaint with full force and effect as if set forth at length in this cause of action.
47. Aside from the above-referenced set of facts, the Village of Depew and its police department caused the Plaintiff to be subjected to Fourth Amendment violations because Officer Gummo's violations were part of the customary practices of the Village of Depew and its police department. Such repeated Fourth & Fourteenth Amendment violations amount to the Village of Depew's deliberate indifference to an obvious need for training of its officers both in the laws pertaining to unlawful seizures, in the art of de-escalation, and in how to avoid conflict and especially lethal conflict when dealing with canines. This



departmental failure includes and is most evident in the failures of Officer Gummo, particularly in the above-referenced sequence of events. This failure of the Department to adequately train its officers resulted in Officer Gummo's actions that caused the Plaintiff harm, and will result in more unnecessary bloodshed if corrective measures aren't taken by the Village of Depew Police Department.

48. Furthermore, the Village of Depew and its Police Department tacitly condones the practice of lethal means used to as a first resort against dogs, aka puppycide, by only performing a superficial, biased, and artificial review of the dogs killed by its Police Department which always results in the erroneous and contrived finding that the killing of the dog is justified by the officer.

49. In this instance, the Department superficially reviewed Officer Gummo's killing of Lady and made a determination that Officer Gummo acted appropriately after disposing of the Lady's body without any forensic or physical evidence being taken, and without recording, considering, or documenting any statements of non-police witnesses.

50. The above-referenced misuse of authority and power by Defendant Brian Gummo, the Village of Depew Police Department, and the Village of Depew was egregious and shocking to the conscience. As a result, Plaintiff was caused and will continue to undergo and endure severe mental anguish, hardship, and distress as result thereof.

51. Such deprivations of Plaintiff's property rights and right to liberty and happiness were in violation of the rights secured to Plaintiff by the Fourth and Fourteenth Amendments of the United States Constitution and by Title 42 U.S.C. § 1983.
52. As a result of the above-referenced defendant's deprivation of Plaintiff's civil and Constitutional rights, Plaintiff has been damaged in an amount to be determined at trial.
53. Plaintiff demands costs and attorney fees pursuant to 42 U.S.C. § 1988.

**Third Cause of Action for Plaintiff Shawn Daniels for violations of the Fourteenth Amendment as per 42 U.S.C § 1983 against the Village of Depew Police Department and the Village of Depew, Stan Carwile, Chief of the Village of Depew Police Department, in His Official and Individual Capacity, and Village of Depew Police Officer Brian J. Gummo, In His Official and Individual Capacity.**

54. Plaintiff, SHAWN DANIELS repeats and reiterates each and every foregoing allegation of this complaint with full force and effect as if set forth at length in this cause of action.
55. In engaging in the above-referenced conduct, by using excessive force against the Plaintiff to summarily deprive him of his property right in possessing Lady, the defendants deprived the Plaintiff of his civil rights pursuant to 42 U.S.C § 1983. Further, as police officers employed by the Village of Depew, defendants were acting under the color of state law.

56. The above-referenced misuse of authority and power by the defendants was egregious and shocking to the conscience. As a direct result, Plaintiff was caused to sustain severe mental anguish, humiliation, and severe emotional distress as a result thereof.

57. Such deprivations were in violation of the rights secured to Plaintiff by the Fourth and Fourteenth Amendments of the United States Constitution and by 42 U.S.C § 1983.

58. As a result of the above-referenced defendant's deprivation of Plaintiff's civil and Constitutional rights, Plaintiff has been damaged in an amount to be determined at trial.

59. Plaintiff demands costs and attorney fees pursuant to 42 U.S.C. § 1988.

**Fourth Cause of Action for Plaintiff Shawn Daniels for the intentional infliction of emotional distress against the Village of Depew Police Department and the Village of Depew, Stan Carwile, Chief of the Village of Depew Police Department, in His Official and Individual Capacity, and Village of Depew Police Officer Brian J. Gummo, In His Official and Individual Capacity.**

60. Plaintiff, SHAWN DANIELS repeats and reiterates each and every foregoing allegation of this complaint with full force and effect as if set forth at length in this cause of action.

61. Defendant Gummo's unjustifiable and brutal slaying of Lady, as specified in the above allegations, constituted extreme and outrageous conduct under the circumstances. The plaintiff himself was in the zone of danger, which

further heightened the emotional distress that the Plaintiff has suffered as a result thereof the defendant's actions.

62. The killing was an intent to cause, or more likely represents a complete disregard of the substantial probability of causing severe emotional distress to the Plaintiff

63. The killing of Lady, in such a violent and gratuitous manner in the presence of the Plaintiff, has in fact caused the Plaintiff severe emotional distress from which he still suffers.

**Fifth Cause of Action for Plaintiff Shawn Daniels for the intentional tort of battery against the Village of Depew Police Department and the Village of Depew, Stan Carwile, Chief of the Village of Depew Police Department, in His Official and Individual Capacity, and Village of Depew Police Officer Brian J. Gummo, In His Official and Individual Capacity.**

64. Plaintiff, SHAWN DANIELS repeats and reiterates each and every foregoing allegation of this complaint defendants, in violation of Title 42 of the United States Code § 1983, et sec.

65. Defendant Brian Gummo engaged in physical conduct by pointing a gun towards the Plaintiff on at least two instances in short succession to one another on the above-referenced date and time, July 5, 2013 at or about 8:30 pm.

66. Said actions of physical contact put the Plaintiff in imminent apprehension of being shot and killed without justification or reason, as was the fate that befell his companion animal moments earlier.

**Sixth Cause of Action for Plaintiff Shawn Daniels for the intentional tort of battery against the Village of Depew Police Department and the Village of Depew, Stan Carwile, Chief of the Village of Depew Police Department, in His Official and Individual Capacity, and Village of Depew Police Officer Brian J. Gummo, In His Official and Individual Capacity**

67. Plaintiff, SHAWN DANIELS repeats and reiterates each and every foregoing allegation of this complaint with full force and effect as if set forth at length in this cause of action.

68. Defendant and police officer Brian Gummo's intentionally and unjustifiably damaged Plaintiff's property in an amount exceeding \$1500, by shooting and killing "Lady," a pure bred formerly vibrant and healthy three year old German Shepherd Dog.

**Eighth Cause of Action for Plaintiff Shawn Daniels for the intentional tort of battery against the Village of Depew Police Department and the Village of Depew, Stan Carwile, Chief of the Village of Depew Police Department, in His Official and Individual Capacity, and Village of Depew Police Officer Brian J. Gummo, In His Official and Individual Capacity**

69. Plaintiff, SHAWN DANIELS repeats and reiterates each and every foregoing allegation of this complaint with full force and effect as if set forth at length in this cause of action.

70. The defendants were negligent in various aspects leading to the above-referenced damages. Particularly, and among other things, The defendants were negligent in:



- Failing and omitting to ensure its police officers used appropriate care, discretion, and regard towards animals and humans;
- Failing and omitting to properly and adequately instruct, supervise and train its police officers;
- Failing to provide proper protocol to deal with animals in routine situations using nonlethal force, in sanctioning the unnecessary slaying of dogs which is equivalent towards promoting animal cruelty;
- Failing to implement any kind of meaningful program preparing officers to interact with dogs on private residences or premises, and in negligently hiring and entrusting Police Officer Brian Gummo and entrusting Police Officer Brian Gummo to carry out the sworn duties of a Village of Depew Police Officer.

**Ninth Cause of Action for Plaintiff Shawn Daniels for violations of the Fourth and Fourteenth Amendment as per 42 U.S.C § 1983 against the Village of Depew Police Department and the Village of Depew, Stan Carwile, Chief of the Village of Depew Police Department, in His Official and Individual Capacity, and Village of Depew Police Officer Brian J. Gummo, In His Official and Individual Capacity.**



71. Plaintiff, SHAWN DANIELS repeats and reiterates each and every foregoing allegation of this complaint with full force and effect as if set forth at length in this cause of action.
72. Defendant Gummo wrongfully and intentionally intruded and invaded into the private residence of the Plaintiff 15 Muskingum Street, Apt. 1 in the Village of Depew, 14043, which is also located within the County of Erie, State of New York.
73. Said entry was without exigency, permission, nor any justifiable legal basis.

**Tenth Cause of Action for Plaintiff Shawn Daniels for violations of the Fourth and Fourteenth Amendment as per 42 U.S.C § 1985 (3) against the Village of Depew Police Department and the Village of Depew, Stan Carwile, Chief of the Village of Depew Police Department, in His Official and Individual Capacity, and Village of Depew Police Officer Brian J. Gummo, In His Official and Individual Capacity.**

74. Plaintiff, SHAWN DANIELS repeats and reiterates each and every foregoing allegation of this complaint with full force and effect as if set forth at length in this cause of action.
75. Defendants, subsequent to the killing of Lady, did conspire, for the purpose of depriving, either directly or indirectly, Plaintiff of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; namely due process in pursuing a

lawsuit or providing Plaintiff with due process in this matter, by disposing of Lady's body without consent nor authority, by unlawfully converting Lady into state hands, and by falsifying reports and findings surrounding her demise.

**Punitive Damages against Defendant Brian Gummo in his Official and Individual Capacity**

76. Plaintiff incorporates by reference all of the allegations set forth herein in this Complaint as if fully set forth herein.
77. Defendant Brian Gummo, in his Official and Individual Capacity was deliberately indifferent to Plaintiff Daniels Constitutional rights as a result of his indifference and malice by shooting Lady in the presence of Plaintiff while Plaintiff was moving towards his dog and within the zone of danger on private premises.
78. Punitive damages are justified against the above-stated defendant for his deliberate indifference and malice towards the Plaintiff herein.

WHEREFORE, the plaintiff demands judgment on the above counts against the defendants, their units, their officers, employees, against and other persons acting in concert or participation with them as stated above, and award the following amounts:

- A. Compensatory damages in favor of the Plaintiffs in an amount to be determined by a jury;
- B. Exemplary damages in favor of the Plaintiff;
- C. Costs of this action, including reasonable attorney fees to the Plaintiff  
Pursuant to the Civil Rights Attorney's Fees Awards Act of 1976, U.S.C.  
1988 (1976); and
- D. Such other relief as the court may deem appropriate.

DATED: Buffalo, New York  
June 29, 2015

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